

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

December 3, 2013 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	11-92412-D-13	VIQUAR/SAMINA ANSARI	MOTION TO MODIFY PLAN
	CJY-1		10-28-13 [45]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

2. 10-93413-D-13 CASSIA JILES
JCK-3

OBJECTION TO CLAIM OF SANTANDER
CONSUMER USA, INC., CLAIM
NUMBER 18
10-7-13 [54]

Tentative ruling:

This is the debtor's objection to the claim of Santander Consumer USA, Inc. ("Santander"), Claim No. 18, in the amount of \$15,790.86. Santander has filed opposition to the objection. For the following reasons, the objection will be sustained.

The debtor objects to the claim on the ground it was filed after the claims bar date fixed in this case. Santander does not dispute that fact, and does not ask that its claim be allowed despite its late filing. Santander contends, however, that the debtor's confirmed chapter 13 plan provided for Santander's claim as a Class 2 claim, secured by the debtor's 2003 Chevrolet Tahoe (the "vehicle"), and provided for payments on that claim. Santander contends the debtor's objection to the claim is really an attempt to reclassify its claim, which she cannot legally do. Citing § 1327 of the Bankruptcy Code, Santander adds that the debtor is bound by the terms of the confirmed plan, and "cannot now raise the issue of the status of [Santander's] obligation or the amount of [Santander's] secured claim." Santander's Opp., filed Nov. 15, 2013, at 2:13-14.

Although Santander is correct that the debtor is bound by the terms of the plan, it is not correct about what the terms of the plan are. The standard-form plan in this district at the time the debtor's plan was filed, and thus, the debtor's plan, provided that "[a] timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan." Debtor's First Modified Plan, filed March 6, 2011, at sec. 3.01. Santander did not file a timely proof of claim, and the debtor states in her declaration that she decided not to file a proof of claim on behalf of Santander.

The plan made an exception for the holders of Class 1 and Class 4 claims, requiring that monthly contract installments be made whether or not the creditor had filed a proof of claim (sec. 3.02); however, Santander's claim was provided for in Class 2, not Class 1 or Class 4. The plan also provided for pre-confirmation adequate protection payments on Class 2 claims secured by purchase money security interests in personal property. Presumably, Santander received pre-confirmation adequate protection payments. With those exceptions, the plan did not provide for any exceptions to sec. 3.01; thus, the plan provided that a timely proof of claim was required to be filed by or on behalf of Santander before it would be entitled to have its claim paid through the plan.

The debtor states in her declaration that she is aware that, upon completion of her plan, Santander will have the right to demand return of the vehicle, and the debtor is prepared to surrender the vehicle upon completion of the plan. The court notes that plan payments under the debtor's 36-month plan began with the September 2010 payment; thus, presumably, the debtor made her last plan payment in August 2013, and has completed the plan. The court assumes the debtor is prepared to return the vehicle at this time upon Santander's demand.

Santander, however, is not entitled to dividends under the plan because no timely proof of claim was filed by Santander or on its behalf. Thus, and as Santander does not deny that its proof of claim was filed late, the objection will be sustained.

The court will hear the matter.

3.	09-90015-D-13	MICHAEL/KIMBERLEY	MOTION TO VALUE COLLATERAL OF
	JDP-1	ZAMZOW	GREENTREE
			10-23-13 [99]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Greentree at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Greentree's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

4.	09-91515-D-13	CHERIE DAVIS	MOTION TO MODIFY PLAN
	CJY-1		10-22-13 [89]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5.	11-94318-D-13	MICHAEL/KAREN CORNELIUS	MOTION TO MODIFY PLAN
	JAD-3		10-23-13 [54]

Final ruling:

The hearing on this motion is continued to December 17, 2013 at 10:00 a.m. No appearance is necessary.

6. 13-91921-D-13 STEPHEN GRAJEDA MOTION FOR RELIEF FROM
ADR-1 AUTOMATIC STAY
ROGER HANEY VS. 10-29-13 [10]

Final ruling:

This case was dismissed on November 15, 2013. As a result the motion will be denied by minute order as moot. No appearance is necessary.

7. 13-91024-D-13 BRUCE VELTHOEN MOTION TO CONFIRM PLAN
BSH-8 10-17-13 [103]

Final ruling:

The motion will be denied as moot. The debtor filed a fifth amended plan on November 5, 2013, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

8. 13-91024-D-13 BRUCE VELTHOEN MOTION TO VALUE COLLATERAL OF
BSH-9 GREEN TREE SERVICING, LLC
11-5-13 [121]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Green Tree Servicing, LLC at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Green Tree Servicing, LLC's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

9. 13-90327-D-13 TORIBIO TORRES AND MOTION TO CONFIRM PLAN
TOG-6 BEATRIZ ROCHEL 10-17-13 [116]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. Feasibility of the plan depends in part on the court's determination of the value of the secured claim of Points West Financial Group SPE, LLC ("Points West"). The hearing on the debtors' motion to value the collateral securing that claim has been set for continued hearing on December 17, 2013, at 10:00 a.m. The hearing on this motion to confirm an amended plan will be continued to the same date and time, to be heard with the motion to value collateral. The hearing will be continued by minute order. No appearance is necessary on December 3, 2013.

Final ruling:

This is debtors' motion to quash subpoenas issued by a creditor in this case, Dr. Robin Hinchman (the "claimant"), to four financial institutions and three medical providers. The claimant has filed opposition to the motion. For the following reasons, the motion will be denied.

The motion is related to the debtors' objection to the claimant's claim filed in this case, DC No. PLG-6, which is also on this calendar. The claim, which is in the amount of \$4,086.59, is for chiropractic services rendered to debtor Gloria Boucher (the "debtor") following a slip-and-fall accident in Ross Stores. Before this bankruptcy case was filed, the claim was determined by the Stanislaus County Superior Court to be secured by the proceeds the debtor received in the settlement of her lawsuit against Ross Stores. The debtors have not objected to the amount of the claim, but only to its secured status.

This court denied the debtors' original objection to the claim for lack of sufficient evidence to demonstrate that the settlement proceeds were, as the debtors claimed, gone by the time they filed this case. In its initial ruling on the debtors' second objection to the claim (the current one), the court found that the debtor had not accounted for her disposition of the entire \$20,268 in settlement proceeds sufficiently for the court to conclude that the debtors had none of the proceeds left. The court also found the debtor's testimony that "[o]n the date of filing, I had \$2,058.00 in my bank account, none of which was part of the insurance proceeds" (Gloria Boucher Decl., filed Aug. 15, 2013, at 3:14-15) to be conclusory in nature, and unsupported by documentary evidence that apparently existed but that the debtors had chosen not to submit for privacy reasons. Finally, the court found that questions had been raised about the reliability of the debtors' conclusion that they had spent all of the settlement proceeds by the petition date. For those reasons, the court continued the hearing to allow the debtors to supplement the evidentiary record and to allow the claimant, if she wished, to conduct limited discovery into the sole issue relevant to the court's decision on the claim objection - whether the debtors had spent all of the settlement proceeds by the time they filed their petition or whether any of the proceeds remained.

In response to that ruling, the debtors filed supplemental evidence. In addition to a supplemental declaration of the debtor, they submitted a copy of their Citibank bank statement for the period January 26 through February 27, 2011, which showed their deposit of the settlement proceeds and an immediate cash withdrawal of \$15,000 and a transfer of \$5,000 to some other account. They also submitted copies of the Citibank bank statements for the periods May 26 through June 26, 2009 and June 27 through July 25, 2011. (The debtors' petition was filed June 29, 2011.) The debtors did not submit copies of their bank statements for the intervening period - February 28, 2011 through May 25, 2011. Instead, the debtor testified that the funds they withdrew in February (the settlement proceeds) were spent, primarily, for medical expenses for their two adult sons and for various household expenses. Some of these expenditures are evidenced by receipts filed by the debtors; others are not.

Pursuant to the court's earlier ruling allowing her to conduct limited discovery, the claimant sought by subpoena copies of the bank statements for all the debtors' bank accounts for the entire six-month period beginning when they received and deposited the settlement proceeds and ending when they filed their bankruptcy petition. The debtors move to quash those subpoenas on the grounds that they seek information that is not relevant and that they are overly broad, harassing, unduly burdensome, and not within the scope of information the claimant needs in order to determine whether all of the settlement proceeds were spent prior to the filing. The court finds, on the contrary, that there is nothing burdensome or harassing to the debtors about the banks producing those bank statements, and there is nothing overly broad about the documents sought. The bank statements may provide information relevant to the issue before the court in the claim objection - whether the settlement proceeds were spent in their entirety. The debtors contend that the bank statements for the single account for the first month of the six-month period and for the last two months - showing the withdrawal of all the funds from that account and showing the balance in that account as of the petition date - should be sufficient. That is simply wrong. The debtors having put in play the issue of their disposition of the funds, and having failed to supply sufficient documentary evidence to support their claim objection not once, but twice, the claimant should have the opportunity to ascertain for herself whether such documentation exists. Further, the motion to quash overlooks the general principle that when debtors file a bankruptcy petition, they open virtually all of their pre-petition financial transactions to inspection by the court, the trustee, and creditors.

Finally, although it is not mentioned in their motion to quash, the court has reviewed the debtor's supplemental declaration on the claim objection, in which she requests that if the motion to quash is denied, the banks be ordered to redact "all [her] personal information and bank account numbers in the documents" they will be producing. Gloria Boucher Supp. Decl., filed Nov. 14, 2013, at 4:3-4. As indicated above, a debtor seeking the benefits of bankruptcy opens his or her financial life to inspection by creditors. Thus, the debtor's request will be denied. However, the claimant's counsel is hereby directed to redact the bank account numbers on the copies of whatever documents he chooses to file with the court.

As to the subpoenas directed to the medical providers, the claimant reports that all three providers had already responded to the subpoenas and produced the documents requested before this motion was filed. Thus, as to those subpoenas, the motion to quash is moot.

For the reasons stated, the motion to quash will be denied. The claimant's request for an award of attorney's fees for opposing the motion will be deferred until the time the court rules on the claim objection. The motion will be denied by minute order. No appearance is necessary.

11. 09-91034-D-13 GERI ROTHSTEIN
CJY-3

MOTION TO MODIFY PLAN
10-22-13 [43]

12. 13-91638-D-13 SHAWNTE PRIEST
MRG-1
OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
10-18-13 [14]
13. 13-91638-D-13 SHAWNTE PRIEST
RDG-1
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-1-13 [21]
14. 12-92439-D-13 WILLIAM/SHEILA SMITH
DEF-3
MOTION TO MODIFY PLAN
10-22-13 [51]
15. 10-95046-D-13 SAILESH/ROSELIN ANAND
JDP-1
MOTION TO VALUE COLLATERAL OF
ONEWEST BANK, FSB
10-23-13 [44]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Onewest Bank, FSB at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Onewest Bank, FSB's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

16. 09-92848-D-13 WILLIAM/MARI REDDELL MOTION TO SELL
CAH-2 10-29-13 [27]

17. 11-93351-D-13 HUMBERTO/YOLANDA MOTION TO MODIFY PLAN
JCK-5 MARTINEZ 10-17-13 [71]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

18. 13-91251-D-13 CARL/CHRISTINE MOTION TO CONFIRM PLAN
TOG-2 CARPENTER 10-16-13 [36]

19. 09-91257-D-13 RANDY/TAMARA GAGE MOTION TO MODIFY PLAN
RLB-3 10-26-13 [50]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

20. 13-91157-D-13 MARTIN PRICE
DEF-2

MOTION TO CONFIRM PLAN
10-18-13 [46]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

21. 13-91859-D-13 WILLIAM/JO ANN
JCK-1 LAMBERSON

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK/WACHOVIA
MORTGAGE
10-31-13 [8]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Bank/Wachovia Mortgage at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Wells Fargo Bank/Wachovia Mortgage's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

22. 13-91067-D-13 LAWRENCE GEIGER
CJY-1

MOTION TO CONFIRM PLAN
10-18-13 [55]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. No opposition to the motion has been filed. However, it appears the plan does not comply with § 1322(a)(2) of the Bankruptcy Code. The Employment Development Department ("EDD") and the State Board of Equalization ("SBE") have filed proofs of claim in the amounts of \$6,454.36 and \$3,431.99, respectively, asserting priority status, whereas the plan does not provide for any claim of the EDD and provides for the claim of the SBE in an incorrect amount (\$6,454.36, which is actually the amount of the EDD's claim). For this reason, the court intends to deny the motion.

The court will hear the matter.

23. 13-91668-D-13 LORENZO/LEONOR LAZARO OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
11-1-13 [22]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

24. 10-92775-D-13 TIMOTHY FRITANGELA MOTION TO MODIFY PLAN
CJY-3 10-23-13 [62]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

25. 11-93675-D-13 RAQUEL CORONA MOTION TO MODIFY PLAN
CJY-2 10-29-13 [49]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26. 13-91180-D-13 STEVEN/KRISTI LOGAN MOTION TO CONFIRM PLAN
BSH-1 10-9-13 [25]

27. 13-91180-D-13 STEVEN/KRISTI LOGAN
BSH-2

MOTION TO VALUE COLLATERAL OF
BESTBUY
10-9-13 [30]

Final ruling:

This is the debtors' motion of to value collateral of Bestbuy. The motion will be denied for the following reasons. First, the notice of hearing gives the hearing date as December 3, 2013 in the caption, but November 19, 2013 in the text. The latter date appears in the text immediately after the sentence informing interested parties that written opposition must be filed at least 14 days before the date of the hearing; thus, the inconsistent dates may have affected the interpretation of the due date for opposition. Second, the proof of service states that the date of service was September 23, 2013, whereas the documents served were not signed until October 9, 2013; thus, the proof of service cannot be accurate.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

28. 13-91482-D-13 CHRISTOPHER KAPPMAYER
PGM-1

MOTION TO VALUE COLLATERAL OF
E*TRADE BANK
11-1-13 [25]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of E*Trade Bank at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of E*Trade Bank's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

29. 13-91898-D-13 ROY/DORENE CORSON
BSH-1

MOTION TO VALUE COLLATERAL OF
AMERICAN GENERAL
FINANCE/SPRINGLEAF FINANCIAL
11-5-13 [9]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of American General Finance/Springleaf Financial at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of American General Finance/Springleaf Financial's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

30. 13-91499-D-13 HARVEY FISH MOTION TO CONFIRM PLAN
BSH-4 10-16-13 [34]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the debtor failed to serve the IRS and the Franchise Tax Board, listed on his Schedule E, at all, and also failed to serve the City of Modesto and the Modesto Irrigation District, listed on his Schedule F, at all. Thus, the debtor has not complied with Fed. R. Bankr. P. 2002(b).

As a result of these service defects, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

31. 10-92309-D-13 KEVIN/JANET GARVIN MOTION TO APPROVE LOAN
CJY-1 MODIFICATION
11-18-13 [73]

32. 09-93413-D-13 SCOTT/BRENDA CAMIRE MOTION TO INCUR DEBT
CJY-1 11-18-13 [38]

33. 12-90923-D-13 RANDAL/PEGGY CURRAN MOTION TO SELL
DCJ-5 11-12-13 [89]

34. 11-92328-D-13 DALE/GLORIA BOUCHER
PLG-6

CONTINUED OBJECTION TO CLAIM OF
DR. ROBIN R. HINCHMAN C/O LAW
OFFICES OF MICHAEL LINN, CLAIM
NUMBER 11
8-15-13 [90]

Tentative ruling:

This is a continued hearing on the debtors' objection to the claim of Dr. Robin Hinchman (the "claimant"), Claim No. 11 on the court's claims register. The debtors' motion to quash the claimant's subpoenas, also on this calendar, has presumably prevented the claimant from obtaining the documents she believes she needs to defend against the claim objection. The court is denying the motion to quash at this time.

Thus, the court intends to continue the hearing on the claim objection to January 14, 2014, at 10:00 a.m., the claimant to submit any additional evidence derived from the subpoenas no later than December 20, 2013, and the debtors to submit any response to that evidence no later than January 3, 2014. This matter having been fully briefed except as to the subpoenaed documents, the parties are cautioned to limit any further filings to the subpoenaed documents and questions raised by them.

The court will hear this matter on December 3, 2013 for the sole purpose of determining whether the above briefing schedule will allow sufficient time for the banks to produce the requested documents. The court will not hear argument concerning the merits of the claim objection on December 3, 2013.